

FILED

03 JUL -9 AM 10:00

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural
Resources Division
United States Department of Justice
Washington, D.C. 20530

DAVID B. GLAZER
Environmental Enforcement Section
Environment and Natural
Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476

DEPUTY

Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

'03 CV 01349K POR

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SAN DIEGO,

Defendant.

NO.

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

Plaintiff United States of America ("United States"),
on behalf of the Administrator of the United States Environmental
Protection Agency ("EPA"), by the Attorney General of the United
States and through the undersigned counsel, hereby alleges as
follows:

JURISDICTION

1. The United States brings this complaint for civil
penalties and injunctive relief, pursuant to Section 309(b)
and (d) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C.
§§ 1319(b), (d). This Court has jurisdiction over the parties
to, and the subject matter of, this action pursuant to 28 U.S.C.

1 §§ 1331, 1345, & 1355(a), and 33 U.S.C. § 1319(b).

2 2. Venue is proper in this judicial district,
3 pursuant to 28 U.S.C. §§ 1391(b), (c) & 1395(a), and 33 U.S.C.
4 § 1319(b), because the transactions and events giving rise to
5 this action occurred in this district and the Defendant is
6 located here.

7 3. The undersigned attorneys are authorized to bring
8 this action, pursuant to CWA Section 506, 33 U.S.C. § 1366, and
9 28 U.S.C. §§ 515, 516, & 519.

10 PARTIES

11 4. Plaintiff is the United States of America, acting
12 on behalf of EPA.

13 5. Defendant is the City of San Diego ("Defendant" or
14 "City"). The City is a "municipality," as defined by CWA Section
15 502(4), 33 U.S.C. § 1362(4), and is regulated as a "person" under
16 the Act, as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

17 RELATED CASE

18 6. This action is related, within the meaning of
19 CivLR 40.1(f), to San Diego BayKeeper and Surfrider Foundation v.
20 City of San Diego, No. 01cv0550-B (POR), which is also an action
21 against the City for the City's violations of the CWA, as
22 described below.

23 STATUTORY BACKGROUND

24 7. CWA Section 301, 33 U.S.C. § 1311, prohibits
25 discharges of pollutants except in accordance with that Section
26 and, inter alia, CWA Section 402, 33 U.S.C. § 1342.

27 8. CWA Section 502(6), 33 U.S.C. § 1362(6), defines
28 "pollutant" broadly to cover a wide range of materials and

1 specifically includes "solid waste," "sewage," and "garbage."

2 9. CWA Section 502(12), 33 U.S.C. § 1362(12), defines
3 "discharge of a pollutant" to mean, inter alia, the addition of
4 any pollutant to "navigable waters."

5 10. CWA Section 502(7), 33 U.S.C. § 1362(7), defines
6 "navigable waters" to mean "the waters of the United States,
7 including the territorial seas."

8 11. CWA Section 502(14), 33 U.S.C. § 1362(14), defines
9 "point source" to mean, inter alia, "any discernible, confined
10 and discrete conveyance, including but not limited to any pipe,
11 ditch, channel, tunnel, conduit, well, [or] discrete fissure
12 . . . from which pollutants are or may be discharged."

13 12. CWA Section 402, 33 U.S.C. § 1342, establishes the
14 National Pollutant Discharge Elimination System ("NPDES")
15 program, under which authorized states, with EPA approval, may
16 issue permits governing the discharge of pollutants from
17 regulated sources. The State of California ("State"), through
18 its several Regional Water Quality Control Boards ("RWQCBs"), has
19 in place an EPA-approved NPDES program.

20 13. The CWA regulations at 40 C.F.R. § 403.3 define a
21 "publicly-owned treatment works" ("POTW") as a treatment works
22 owned by a State or municipality, including any facilities that
23 store, treat, recycle, or reclaim municipal sewage or liquid
24 industrial wastes. It also includes sewers, pipes, and other
25 conveyances if used to convey waste water to a POTW treatment
26 plant.

27 14. The CWA regulates POTWs under, inter alia, the
28 regulations at 40 C.F.R. Part 122, which implement the NPDES

1 permit program.

2 15. Pursuant to CWA Section 309(a)(3), 33 U.S.C.
3 § 1319(a)(3), whenever any person is found to be in violation of,
4 inter alia, CWA Section 301, 33 U.S.C. § 1311, or any condition
5 or limitation contained in a permit issued under CWA Section 402,
6 33 U.S.C. § 1342, EPA may issue an administrative order requiring
7 compliance, or EPA may authorize suit in federal district court,
8 pursuant to CWA Section 309(b).

9 16. Pursuant to CWA Section 309(b), EPA may bring suit
10 for appropriate relief, including a temporary or permanent
11 injunction, for any violation for which the Agency could issue an
12 administrative order pursuant to Section 309(a). Such injunctive
13 relief may include an order restraining the violator from further
14 violations or compelling the violator to comply with the Act.

15 17. Pursuant to CWA Section 309(d), as adjusted by the
16 Debt Collection Improvement Act of 1996, Pub. L. No. 104-134,
17 110 Stat. 1321 (Apr. 26, 1996), and 40 C.F.R. §§ 19.2 & 19.4
18 (Table), a person violating, inter alia, CWA Section 301,
19 33 U.S.C. § 1311, or a condition or limitation contained in a
20 permit issued under CWA Section 402, 33 U.S.C. § 1342, shall be
21 subject to civil penalties of up to \$27,500 per day for each
22 violation.

23 18. CWA Section 309(g)(6)(A)(iii), 33 U.S.C.
24 § 1319(g)(6)(A)(iii), provides that a violation "for which . . .
25 [a] State has issued a final order not subject to further
26 judicial review and the violator has paid a penalty assessed
27 under . . . comparable State law, . . . shall not be the subject
28 of a civil penalty action under [CWA § 309(d)]"

1 NOTICE TO THE STATE OF CALIFORNIA

2 19. In accordance with CWA Section 309(b), notice of
3 the commencement of this action has been given to the State.

4 20. The United States understands that, in accordance
5 with CWA Section 309(e), 33 U.S.C. § 1319(e), the State of
6 California, on behalf of the San Diego RWQCB, intends to file its
7 own complaint to be joined with this action.

8 GENERAL ALLEGATIONS

9 21. The City owns and operates several POTWs that are
10 regulated under the CWA. Those POTWs collect, treat, and dispose
11 of sanitary sewage in the metropolitan San Diego area, serving a
12 population of two million people.

13 22. The City's POTWs include the Point Loma Wastewater
14 Treatment Plant and ocean outfall, the North City Reclamation
15 Plant, and the South Bay Reclamation Plant, together with
16 approximately 3,000 miles of collection system lines and 82 pump
17 stations (collectively, the "POTW system").

18 23. The City currently uses the Point Loma ocean
19 outfall to discharge all treated waste from its POTW system, an
20 average of 180 million gallons per day of sewage treated to the
21 advanced primary level, which is then discharged to the Pacific
22 Ocean.

23 24. The Point Loma plant operates under a modified
24 NPDES permit issued, on November 9, 1995, jointly by EPA Region 9
25 and the San Diego RWQCB, pursuant to CWA Section 301(h),
26 33 U.S.C. § 1311(h) (the "1995 permit").

27 25. The 1995 permit contains the following conditions
28 governing discharges from the City's POTW system: (1) A.11

1 prohibits the discharge of waste causing flow, ponding, or
2 surfacing on lands not owned or controlled by the City; (2) A.12
3 prohibits dumping, deposition, or discharge of waste into waters
4 of the State or adjacent to such waters, such that it may be
5 transported to State waters; (3) A.13 prohibits the discharge of
6 waste into storm drains; (4) A.14 prohibits the discharge of
7 treated or untreated sewage to waters of the State or to a storm
8 drain; and (5) A.23 prohibits the discharge of waste in any
9 location not authorized by the permit.

10 26. Standard Provision 1.d. of the 1995 permit
11 requires that "[t]he permittee shall at all times properly
12 operate and maintain all facilities and systems of treatment and
13 control (and related appurtenances) which are installed or used
14 by the permittee to achieve compliance with the conditions of
15 this permit."

16 27. The City has had a history of sewage spills from
17 its POTW collection and conveyance system. On June 9, 1997, the
18 Court entered a Stipulated Final Order for Injunctive Relief in
19 United States v. The City of San Diego, No. 88cv1101-B, pursuant
20 to which the City undertook to implement certain measures
21 designed to address spills from its POTW system. The Stipulated
22 Final Order required, in part, that the City replace or
23 rehabilitate 60 miles (out of approximately 200 miles) of its
24 concrete sewer mains. The Stipulated Final Order also required
25 the City to prepare a sewer pump station and force main audit;
26 expand the residential grease program; upgrade its information
27 management system, including a trunk sewer study and model
28 development; and fund \$300,000 per year for chemical root-

1 inhibitor.

2 28. Despite entry of the Stipulated Final Order and
3 work performed under that Order, since 1997 over 1,500 spills
4 have occurred from the City's POTW system, resulting in the
5 illegal discharge of over 42 million gallons of raw sewage.

6 29. Untreated sewage contains organic matter, bacteria
7 and other potential pathogens, all of which are harmful to the
8 environment, including marine life. Similarly, the pathogens
9 released from raw sewage create a potential public health risk if
10 humans come into contact with the sewage.

11 30. The RWQCB has assessed civil penalties, pursuant
12 to its authorities under the California Porter-Cologne Water
13 Quality Control Act, for certain of the City's spills.

14 FIRST CLAIM FOR RELIEF

15 31. Paragraphs 1 through 30, above, are incorporated
16 herein by reference as if fully set forth below.

17 32. The 1995 permit prohibits spills of sewage from
18 the City's POTW collection and conveyance system.

19 33. The spills from the City's POTW collection and
20 conveyance system constitute unpermitted discharges of pollutants
21 to waters of the United States or discharges that are likely to
22 enter waters of the United States, or constitute violations of
23 the terms of the 1995 permit, set forth in Paragraphs 25 and 26,
24 above, including the requirement to properly operate and maintain
25 the City's system.

26 34. Each of Defendant's spills constitutes a violation
27 of CWA Sections 301 and 402, 33 U.S.C. §§ 1311, 1342.

28 35. Under CWA Section 309(d), 33 U.S.C. § 1319(d),

1 Defendant is liable for civil penalties of up to \$27,500 per day
2 for each day of each violation.

3 SECOND CLAIM FOR RELIEF

4 36. Paragraphs 1 through 30, above, are incorporated
5 herein by reference as if fully set forth below.

6 37. Defendant's spills from its POTW collection and
7 conveyance system constitute ongoing violations of CWA Sections
8 301 and 402, 33 U.S.C. §§ 1311, 1342.

9 38. Under CWA Section 309(b), 33 U.S.C. § 1319(b),
10 this Court may issue an order requiring Defendant to come into
11 compliance with all terms of the 1995 permit governing the City's
12 sewage collection and conveyance system and to otherwise come
13 into compliance with the CWA and cease its unpermitted discharges
14 of sewage.

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff United States of America prays for
17 a judgment of this Court:

18 1. Assessing civil penalties against Defendant,
19 pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), of up to
20 \$27,500 per day for each day of each violation of the CWA, as
21 alleged herein;

22 2. Enjoining Defendant, pursuant to CWA Section
23 309(b), 33 U.S.C. § 1319(b), to take all measures necessary to
24 achieve compliance with all permit terms governing its POTW
25 collection and conveyance system and to otherwise come into
26 compliance with the CWA and cease its unpermitted discharges of
27 sewage;

28 3. Awarding the United States its costs in this

1 action; and

2 4. Granting such further relief as may be
3 appropriate.

4 Respectfully submitted,

5
6 Dated: July 3, 2003

7 THOMAS L. SANSONETTI
8 Assistant Attorney General
9 Environment and Natural resources
10 Division
11 United States Department of Justice
12 Washington, D.C. 20530

13
14 Dated: July 3, 2003

15 DAVID B. GLAZER
16 Environmental Enforcement Section
17 Environment and Natural Resources
18 Division
19 United States Department of Justice
20 301 Howard Street, Suite 1050
21 San Francisco, California 94105
22 Telephone: (415) 744-6491
23 Facsimile: (415) 744-6476

24
25
26
27
28
OF COUNSEL:

Gail Cooper, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
Telephone: (415) 972-3880
Facsimile: (415) 947-3570